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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,052	11/18/2003	Tristan M. Simon	4113-00100	4269

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CONLEY ROSE, P.C.  
5700 GRANITE PARKWAY, SUITE 330  
PLANO, TX 75024

EXAMINER

BEAUCHAINE, MARK J

ART UNIT PAPER NUMBER

3653

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/716,052

Applicant(s)

SIMON, TRISTAN M.

Examiner

Mark J. Beauchaine

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11/17/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, said claims include the term "customers" in the preamble. Said limitation is ambiguous as to whether "customers" are being claimed by the Applicant.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Number US 6,553,386 B1 by Alabaster (hereinafter "Alabaster") in view of Patent

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Number 4,950,164 by Lennon-Thompson et al (hereinafter "Lennon") and further in view of Patent Number 5,335,509 by Namisniak et al (hereinafter "Namisniak"). The diet system disclosed by Alabaster incorporates a computer system that "provides the ability to create partial or full meals" (column 7, lines 8 plus). The system further allows "the user to select a test meal type, i.e., breakfast, lunch, dinner [etc.]" and in response to the meal selection, presents various food items selected with the particular meal selected (column 7, lines 26 plus). The training screen and good group items (see Figure 15) disclosed by Alabaster read on the Applicant's menu items and label, respectively. Furthermore, Alabaster incorporates the use of color-coding to organize different characteristics associated with different food items (column 6, lines 8 plus). Although Alabaster fails to specifically disclose the assignment of a particular color for food items associated with a particular meal the use of color-coding to identify food items is well known in the art.

Lennon teaches a diet system that incorporates sets of color-coded cards 10, 20, 30 and 40 associated with food items of a particular meal (see Abstract and Figure 1). Each card set incorporates subsets 11-14, etc. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a color-coded meal card sets taught by Lennon into the meal formulating system of Alabaster to provide an effective means of assisting a user to create a meal from separate food items.

Although Alabaster discloses food icons in lieu of color-coded individual display containers, the use of such food identifying means is well known in the art. Manisniak teaches food storage containers 14 that incorporate a colored identifier 22 that match

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an identifier swatch 26. It would have been obvious to one of ordinary skill in the art to incorporate said containers 14 into the diet system of Alabaster to provide an effective means of assisting a user to associate different food items into a meal.

Regarding claim 7, the individual colored cards 11-14 of Lennon read on the Applicant's tags. Regarding the Applicant's claims 21-23, the use of alphanumeric, Braille and iconographic symbols are obvious variations of color-coded means of item identifiers that would have been obvious to one of ordinary skill in the art.

Regarding claims 12-14, the steps of cooking and serving food items as a meal are the ultimate purpose of the above-mentioned association of food items into a meal.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alabaster in view of Lennon and in further view of Namisniak as applied to claim 1 above, and further in view of Patent Number 4,892,366 by Yerman (hereinafter "Yerman").

Although Alabaster fails to disclose a sneeze guard associated with its diet system, the use of sneeze guards associated with the serving of food items in institutional setting is well known in the art. It would have been obvious to one of ordinary skill to incorporate the sneeze guard system 10 of Yerman into the food serving system of Alabaster to provide a means of maintaining a sanitary food serving environment.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark J. Beauchaine whose telephone number is (571)272-6934. The examiner can normally be reached on 8:00AM through 5:00PM Mondays through Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571)272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjb



**EILEEN D. LILLIS**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600